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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

GEORGIA

1. The Human Rights Committee considered the initial report of Georgia (CCPR/C/100/Add.1) at its 1564th, 1565th and 1566th meetings, on 26 and 27 March 1997, and adopted 1/ the following concluding observations:

A. Introduction

2. The Committee notes with interest the initial report submitted by Georgia and welcomes the dialogue it has had with a high-level delegation. It notes with satisfaction that the delegation of Georgia was able to supplement the report and provide clarifications concerning the legal provisions in force and their scope, and on the reform that is under way, which has enabled the Committee to have a somewhat clearer picture of the human rights situation in Georgia.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that Georgia is still experiencing the influence of the totalitarian past, which has created feelings of mistrust and insecurity among the citizens. In addition, the State party is still suffering from the effects of conflicts in South Ossetia (1992) and Abkhazia (1993-1994), which gave rise to serious violations of human rights, including massive population displacements, and the Government is having difficulty exercising its jurisdiction in those areas in respect of the protection of human rights.

1/ At its 1583rd meeting, on 9 April 1997.

C. Positive aspects

4. The Committee notes the assurances given by the head of State that the enjoyment of human rights would become a priority in Georgia.

5. The entry into force of the 1995 Constitution - even though it does not fully reproduce the rights guaranteed under the Covenant - and the establishment of the Constitutional Court, to which any citizen alleging a violation of his constitutional rights can have recourse, are viewed by the Committee as encouraging signs.

6. The Committee notes with satisfaction the abolition of the internal passport (propiska), which was an impediment to freedom of movement as provided for under article 12 of the Covenant.

7. The reform of the Criminal Code and the Criminal Procedure Code, coupled with the restructuring of the Prokuratura with the aim of limiting its role to that of a prosecuting body stripped of the prerogatives it formerly enjoyed, which enabled it to interfere in judicial decisions, are viewed by the Committee as signs of progress.

8. While regretting the under-representation of women in the organs of government and the inequalities which persist in the economic and social spheres, the Committee is pleased that discrimination against women before the law and in education has lessened.

9. The Committee welcomes the State party's efforts to afford more active protection for the human rights of minorities with a view to guaranteeing them the free expression of their cultures and use of their languages.

D. Principal subjects of concern

10. The Committee deplores the fact that no remedies were available to victims of events occurring in 1992, 1993 and 1994 enabling them to seek redress for violations of their rights as provided under article 2 of the Covenant. In that connection, the Committee notes that the State party was bound by the provisions of the Covenant from the date on which the country became independent, and hence also during the period preceding its declaration of accession, since it must be considered to have succeeded to the obligations undertaken by the former Soviet Union, of which it was an integral part until the time it proclaimed its independence.

11. The Committee regrets that the Covenant, although directly applicable under domestic law, is not invoked before the courts. In addition, it considers that the failure to nominate anyone to the post of Ombudsman, which was established in May 1996, denies an effective remedy to persons alleging a violation of their fundamental rights.

12. The Committee regrets that, in spite of the elimination of inequalities before the law, women continue to be the victims of inequal treatment and discrimination in the political, economic and social spheres. It further notes with concern that methods of contraception other than abortion are very difficult to obtain.

13. The Committee fears that the moratorium that has been instituted on the carrying out of death sentences is a weak palliative. In spite of the reduction in the number of offences carrying the death penalty, these are still too numerous and some of them do not come within the category of the most serious crimes envisaged in article 6 of the Covenant. It also deplores the fact that some capital sentences appear to have been imposed in cases where confessions were obtained under torture or duress or following trials where the guarantees provided under article 14 of the Covenant were not respected, particularly the right to have a case reviewed by a higher court (art. 14, para. 5, of the Covenant).

14. The Committee is deeply concerned by cases of torture inflicted on individuals deprived of their liberty, including for the purpose of extracting confessions. It deplores the fact that these and other acts of torture usually go unpunished and that in many cases a lack of confidence in the authorities keeps the victims from lodging complaints.

15. The Committee deplores the abuse of pre-trial detention and police custody. The limits placed on those measures by the Constitution, are often not observed in practice, in disregard also of the provisions of article 9 of the Covenant.

16. The Committee is deeply concerned at the disastrous prison situation; crowding, poor sanitary conditions and lack of medical care have resulted in a high rate of infectious disease and a very alarming mortality rate, in particular among juvenile detainees. The Committee stresses that the State party does not comply with the provisions of article 10 of the Covenant according to which all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

17. The Committee is concerned at the continuing close relationship between the procurator and the judges; it fears that, in the absence of any statute enforcing the independence of the judiciary, the impartiality of decisions cannot be guaranteed and that the executive may exert pressure on the judiciary.

18. The Committee notes with disquiet that court proceedings do not meet the conditions required by article 14 of the Covenant for example, although the law provides for access to the assistance of counsel, in practice this is made difficult because of excessive bureaucracy.

19. The Committee regrets that, despite the elimination of the propiska, there remain obstacles to freedom of movement within the country. It notes with concern that there continues to be a great deal of corruption in this area.

20. The Committee emphasizes that the vague and overly general characterizations of crimes and the difficulty of determining their constituent elements (insubordination, sabotage, etc.) have allowed political opponents of the Government to be prosecuted.

21. The Committee regrets that because of the absence of legislation concerning the exercise of the freedom of association, it has not been possible to establish free trade unions so that workers may exercise their rights under article 22 of the Covenant.

22. The Committee is concerned at the increase in the number of children affected by poverty and social dislocation and the concomitant increase in the number of street children, delinquents and drug addicts.

E. Suggestions and recommendations

23. The Committee invites the Government to provide all individuals under its jurisdiction with an effective remedy and compensation for violations of their human rights found to have occurred since independence in 1991.

24. The Committee recommends that the State party appoint an ombudsman as soon as possible and that procedures be established to give effect to the Committee's findings under the Optional Protocol. The Committee urges the Government to ensure the legitimacy and authority of the Committee for Human Rights and Ethnic Relations and to define the relationship between that Committee and the Ombudsman.

25. The Committee urges the authorities to continue the moratorium on executions and to continue the serious efforts that have been made towards abolishing the death penalty.

26. The Committee recommends that the State Party undertake systematic and impartial investigations into all complaints of ill-treatment and torture, bring to trial persons charged with violations as a result of these investigations, and compensate the victims. Confessions obtained under duress should be systematically excluded from judicial proceedings and, given the admission of the State party that torture had been widespread in the past, all convictions based on confessions allegedly made under torture should be reviewed.

27. The Committee recommends that detention and pre-trial detention should be carried out in accordance with the requirements of the Constitution and the Covenant. It stresses, inter alia, that all persons who are arrested must immediately have access to counsel, be examined by a doctor without delay and be able to submit promptly an application to a judge to rule on the legality of the detention.

28. The Committee urges the State party to take urgent steps to improve the situation in prisons, in particular, sanitary conditions. It invites the State party to cut down on the use of imprisonment as a punishment for minor violations and on pre-trial detention for excessive periods.

29. The Committee recommends that the authorities put an end, once and for all, to the restrictions on freedom of movement within the country and on the right to leave the country.

30. The Committee urges the State party to enact a law guaranteeing the independence of the judiciary and providing for its total autonomy vis-à-vis the procurator and the executive.

31. The Committee urges the State party to guarantee the rights set forth in article 14 of the Covenant, in particular by remedying the deficiencies with regard to the exercise of the right to defence and the right to appeal. The creation of an independent legal profession is, in the Committee's view, a necessary precondition for the effective enjoyment of such rights.

32. The Committee earnestly recommends that the State party, in connection with the revision of the Penal Code, repeal those provisions which make it possible to prosecute political opponents for their beliefs under cover of upholding the law.

33. The Committee invites the State party to enact laws making it possible for trade unions to be formed and to carry out their activities freely in defence of the rights of workers.

34. The Committee urges the State party to take urgent steps to protect children in accordance with the provisions of article 24 of the Covenant.

35. The Committee recommends that educational and training programmes be drawn up with a view to developing a culture of respect for human rights in all sectors of the population, inter alia, judges, the security forces and prison personnel. These programmes should also emphasize that women are entitled to full enjoyment of their fundamental rights.

36. The Committee recommends that the report of the State party, together with the concluding observations adopted by the Committee, should be widely disseminated and that the text of the Covenant be disseminated in all languages commonly used in the country.